

Verizon's App-Blocking Defense: "Of Course You Should Pay Twice"

Verizon Responds to Free Press Complaint by Demonizing its Subscribers

Leave it to a company like Verizon to respond to criticism of its shady business practices by forcing its customers to pay twice, then basically calling them thieves if they don't.

First, a bit of recent history:

In early June, Free Press filed a complaint at the FCC against Verizon Wireless after news stories uncovered a rare glimpse into the business arrangement between the wireless provider and Google, the company behind the Android smartphone operating system and app market. According to Google, wireless carriers asked the giant Internet company to limit and restrict their subscribers' access to some applications on their Android phones.

The applications in question? Those that allow users to cheaply connect their laptops to the Internet using their mobile data service ? a simple process called ?tethering.? For consumers who need frequent access to the Internet away from their home or office, or who can't afford numerous separate broadband connections, tethering is an important feature.

Carriers sell tethering as well, but it's an extra service that brings with it extra fees (up to \$30/month). That's why many users install applications that enable a smartphone's tethering feature for free or for a lower cost. These applications ? the ones that compete directly with Verizon's subscription model ? are the applications Verizon asked Google to restrict.

This app blocking is an anti-consumer practice that chills innovation and punishes subscribers that already pay a lot for service. It also violates the public interest obligations Verizon agreed to when it started using the public's airwaves to build its 4G mobile broadband business. (These requirements are known as the ?C-Block obligations,? named after the section of spectrum licensed to Verizon.) Free Press pointed this troubling practice out to the FCC, and, after a bit of persuasion the agency ordered Verizon to respond to our complaint by, August 8.

Verizon's response is in. Let's take a look at its arguments.

Verizon Wireless points the finger at Google and its app store, arguing that since its business partner is doing the actual filtering, Verizon is still meeting its spectrum license obligations.

Verizon also argues that unauthorized tethering is a form of theft similar to someone stealing cable. Since Verizon offers the same tethering ability as third-party apps, but labels it a ?service? (otherwise known as an additional charge on your wireless bill), it argues that consumers who use non-Verizon software to do the same thing at lower prices are ?stealing.? Subscribers are already paying Verizon for a data connection, but why should consumers only have to pay once when the company can charge them twice?

The company further defends itself by arguing that tethering through outside software is prohibited by its terms of service. Subscribers are forbidden from tethering unless they sign up for an additional \$30 / month.

Let's break these three arguments down.

The last is easiest to dispose of. Luckily for consumers, Verizon's terms of service do not supersede federal regulations. Simply telling consumers ahead of time that they are barred from connecting the

devices of their choice to Verizon's network, or using the applications of their choice on the network, doesn't mean the company gets a pass on federal rules requiring it to allow subscribers to use any legal devices and applications on its network.

The "Blame Google" argument can also be discarded. When the FCC wrote its openness obligations governing Verizon's spectrum, it considered the dynamic between wireless providers and third parties, asserting that coordinated action between them could still constitute a violation of the rule. Furthermore, the Commission makes clear that whatever company operates in this spectrum should not interfere directly OR indirectly with users' ability to access the application of their choice. The order uses the broadest terms to prohibit actions that "impede the development and deployment of devices and applications that consumers want to use."

Google has said publicly that it is acting on behalf of Verizon. Regardless of whether Verizon is actively requesting or contractually requiring Google to filter applications, Verizon is violating its license conditions. The FCC should investigate the arrangement between the two companies to get to the bottom of this. But Verizon's argument in favor of blocking shows just how much the wireless provider benefits from such anti-consumer and anti-competitive practices. It wants to limit access to these applications, but cannot evade avoid its C-Block obligations by using its business partners to restrict access.

Lastly, and perhaps most fundamental to our disagreement with Verizon, is the argument that its subscribers are effectively stealing service unless they pay twice for the same data. Let's focus on the implications of Verizon's argument.

When I sign up for wireless data service ? whether I commit to an unlimited plan or a capped plan that provides 5GB of data per month ? how I decide to use my Internet connection shouldn't matter. I should be free to use all 5 GB through my laptop or on my smartphone.

Verizon argues the opposite. It wants to segment and monetize each click their subscribers make. Taken to its natural conclusion, this argument paints a dim future for mobile broadband, where carriers and not consumers get to dictate how the market evolves. What's to stop a carrier from deciding that instant messaging applications like AIM are "services" that compete with the carrier's text messaging services, and consequently attempting to prevent subscribers from accessing these applications? How about Netflix competing with a carrier's new video app? Amazon's Kindle app? While this may be a profitable business practice for Verizon and other wireless carriers trying to nickel-and-dime us, it's not good for consumers or innovation. It clearly violates the C-Block rules governing Verizon, and conflicts with the spirit of the weakened open Internet rules the FCC adopted last year.

Now, all eyes are on the FCC and there is a lot riding on its decision.

The Commission has placed a lot of faith in the C-Block rules. It relies on these obligations in its open Internet order, citing the rules six times in the seven pages that address Net Neutrality and the mobile market to "reaffirm [its] commitment to enforcing the open platform requirements applicable to" C-Block licensees."

The Commission's action or inaction here will speak volumes. It will set an important precedent for the

Commission's willingness to turn its many promises into real consumer protection. It should find that Verizon in violation of the conditions of its open access rules, and put a stop this anti-consumer behavior immediately.